IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10672 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NANALAL GOVINDJI NAGAR - Petitioner(s)

Versus

DISTRICT MAGISTRATE & 3 - Respondent(s)

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Appearance :

MR YOGESH S LAKHANI for Petitioner No(s).: 1.

RULE SERVED BY DS for Respondent No(s).: 1,2.

Mr. MIA SHAIKH for Respondent No(s).: 3.

Mr.P.D.Bhate, AGP for Respondent No(s).: 4.

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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 21/07/2005

ORAL JUDGMENT

1.By filing this petition, the petitioner detenu has challenged the detention order dated 18.05.2005

passed by the District Magistrate, Rajkot in exercise of the powers conferred upon her under sub-section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (“the Act” for short), as, the District Magistrate, Rajkot acting under the Act arrived at the subjective satisfaction that it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of supplies of essential commodity essential to the community.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date.

3. Heard the learned advocate appearing for the petitioner Mr.Yogesh Lakhani, learned AGP Mr.Bhate for respondent nos.1, 2 and 4 and Mr.M.A.Shaikh for respondent no.3. Affidavits-in-reply filed on behalf of respondent No. 1 and 2 were taken into consideration.

4. Learned advocate appearing on behalf of the petitioner detenu raised manifold contentions. It is mainly contended by Mr.Lakhani that subjective satisfaction arrived at by the detaining authority to prevent the petitioner under the order of detention is not genuine in view of the fact that there is inordinate and unexplained delay in passing the order of detention. He submitted that there is a delay of about three months in passing the order of detention and hence the satisfaction of the detaining authority is not genuine and the same is liable to be quashed and set aside on this ground alone.

5. Learned advocate appearing for the petitioner has relied upon the decision of this court in the case of Elesh Nandubhai Patel V/s Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed in paragraph 21 as under :

> "In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e., after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V/s State of U.P., reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S.Ramamurthy reported in 1993(2) Suppli SCC 61."

6. It is, therefore, submitted that the subjective

satisfaction of the detaining authority is vitiated on the ground of delay in passing the detention order and, therefore, the impugned detention order is required to be quashed and set aside.

7. On the other hand, Mr.Bhate, learned AGP and Mr.Shaikh, learned Addl. Standing Counsel has tried to support the impugned detention order passed against the petitioner. No affidavit-in-reply is filed on behalf of the respondent No.3.

8. The impugned order came to be challenged by the petitioner detenu on various grounds. One of the grounds is the delay in passing the detention order. From the perusal of the grounds of detention, it appears that the fair price shop came to be inspected by the team of Special Inspector on 08.02.2005 and the record of the shop was seized and the statement of the petitioner came to be recorded on 14.02.2005. Thereafter, after about two months, the statement of the petitioner came to be recorded on 4.5.2005 just with a view to cover up this order of detention and the detention order came to be passed on 18.5.2005 and, therefore, delay in passing the detention order may reflect non-application of mind in arriving at the subjective satisfaction by the detaining authority. It is true that the delay by itself in passing the detention order is not fatal to the detention of the person and has to be looked into from the facts of each case. The facts of this case are squarely covered by the decision of this Court in the matter of Elesh Nandubhai Patel V/s Commissioner of Police, reported in 1997(1) GLH 381, the detention order, therefore, cannot be sustained and deserves to be quashed on this ground

alone.

9. In view of what is stated above, the petition is allowed. The order of detention dated 18.05.2005 is quashed and set aside. The detenu Nanalal Govindji Nagar is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(SHARAD D DAVE, J)

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